

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Caption: Robert S. Wiggins

Full name(s) of Plaintiff(s)

v.

USA TRUCK, INC.
FSSolutions

Full name(s) of Defendant(s)

COMPLAINT
FOR EMPLOYMENT
DISCRIMINATION

CIVIL ACTION
NO. _____

JURY TRIAL DEMANDED

This action is brought for discrimination in employment pursuant to (check only those that apply):

☒ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).
NOTE: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

____ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621-634.
NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission, and you must have been at least 40 years old at the time you believe that you were discriminated against.

____ Americans with Disability Act of 1990, as codified, 42 U.S.C. §§ 12112-12117.
NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

____ Pennsylvania Human Relations Act, as codified, 43 Pa. Cons. Stat. §§ 951-963 (race, color, family status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals).

JURISDICTION

The jurisdiction of this Court is invoked by the Plaintiff pursuant to 28 U.S.C. § 1331, (Federal Question).

NOTE: In order to bring suit in federal district court under the Pennsylvania Human Relations Act, you must first file a complaint with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations, and then you must wait one year prior to filing a lawsuit.

I. Parties in this complaint:

- A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name: ROBERT S. Wiggins
 Street Address: 125 BARNET AVENUE
 County, City: MERCER, TRENTON
 State & Zip: NEW JERSEY 08611
 Telephone Number: 215-431-3217

- B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the caption on the first page. Attach additional sheets of paper as necessary.

Defendant Name: USA TRUCK, INC.
 Street Address: 3200 INDUSTRIAL PARK RD.
 County, City: P.O. BOX 449, VAN BUREN COUNTY, VAN BUREN
 State & Zip: ARKANSAS 72956
 Telephone Number: 479-471-6625

- C. The address at which I sought employment or was employed by the defendant(s) is:

Employer: USA TRUCK, INC.
 Street Address: 3200 INDUSTRIAL PARK RD.
 County, City: P.O. BOX 449, VAN BUREN COUNTY, VAN BUREN
 State & Zip: ARKANSAS 72956
 Telephone Number: 479-471-6625

II. Statement of the Claim

- A. The discriminatory conduct of which I complain in this action includes (check only those that apply to your case):

☐ Failure to hire me
☒ Termination of my employment
☐ Failure to promote me

1. Parties in this complaint

B. List all defendants' names and the address where each defendant may be served.

Defendant # 2

Name: FSSolutions

Street Address: 100 Highpoint Dr. STE 102

County, City: Bucks County, Chalfont

State & Zip: Pennsylvania 18914

Telephone Number: 800-732-3784

- ☐ Failure to reasonably accommodate my disability
☐ Failure to reasonably accommodate my religion
☐ Failure to stop harassment
☒ Unequal terms and conditions of my employment
☐ Retaliation
☒ Other (specify): Failure to follow drug policy & the law

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

B. It is my best recollection that the alleged discriminatory acts occurred or began on or about: (month) MAY, (day) 11, (year) 2021.

C. I believe that the defendant(s) (check one):

- ☐ is still committing these acts against me.
☒ is **not** still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check only those that apply and state the basis for discrimination, for example, what is your religion, if religious discrimination is alleged):

- ☒ race AFRICAN AMERICAN ☒ color BLACK
☐ religion _____ ☐ gender/sex _____
☐ national origin _____
☐ age My date of birth is _____ (Give your date of birth only if you are asserting a claim of age discrimination)

E. The facts of my case are as follow (attach additional sheets of paper as necessary):

SEE ATTACHED.

FACTUAL ALLEGATIONS

1. On March 22, 2021, Plaintiff Robert Wiggins, an African American, a member of a protected class, started employment with USA Truck, Inc. as a Class A student truck driver.
2. BECAUSE Defendant USA Truck is a very large company with over 2,500 employees, the position paid over \$80,000 a year to start.
3. Plaintiff Robert Wiggins was qualified for the position because he completed the required training and possessed a Class A commercial driver's license. Specifically, on or about March 22, 2021, Plaintiff took a DOT physical and a drug test and passed. Then after three days of orientation, he was assigned a driver trainer for thirty days or 10,000 miles. On or about April 29, 2021, Plaintiff completed the thirty days and/or 10,000 miles required for solo driver status. On or about April 30, 2021, Plaintiff took the road test for solo driver status and passed.

4. On May 6, 2021, six days after becoming a solo driver, Plaintiff was asked to take another drug test that violated 49 CFR 382.305 (i)(1), which states that "[t]he selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method" Defendants USA Truck, Inc. and its agent FSSolutions did not follow this regulation when selecting Plaintiff for a random drug test.

5. This is, also, where Plaintiff Robert Wiggins was treated less favorably than others similarly-situated. In particular, Harold Tapp a CAUCASIAN solo driver / driver trainer for USA Truck, Inc. was treated differently regarding random drug testing. And other solo drivers (not known by Plaintiff) working for Defendant USA Truck, Inc. that are outside Plaintiff's protected class and similarly-situated.

6. On May 11, 2021, Plaintiff suffered an adverse employment action when Defendant USA Truck, Inc. terminated his employment in violation of Title VII of the Civil Rights Act of 1964, as amended.

NOTE: *As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the Pennsylvania Human Relations Commission, or the Philadelphia Commission on Human Relations.*

III. Exhaustion of Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on: MAY 28, 2021 (Date).

B. The Equal Employment Opportunity Commission (*check one*):

☐ has not issued a Notice of Right to Sue Letter.

☒ issued a Notice of Right to Sue Letter, which I received on 11-1-2021 (Date).

NOTE: *Attach to this complaint a copy of the Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.*

C. *Only plaintiffs alleging age discrimination must answer this question.*

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (*check one*):

☐ 60 days or more have passed.

☐ fewer than 60 days have passed.

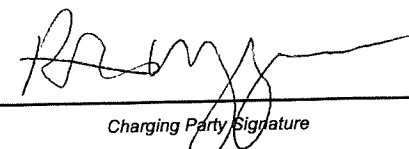
D. It is my best recollection that I filed a charge with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations regarding the defendant's alleged discriminatory conduct on: _____ (Date).

E. Since filing my charge of discrimination with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations regarding the defendant's alleged discriminatory conduct (*check one*):

☐ One year or more has passed.

☐ Less than one year has passed.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC		Agency(ies) Charge No(s): 530-2021-03803
and EEOC				
State or local Agency, if any				
Name (indicate Mr., Ms., Mrs.) Mr. Robert Wiggins		Home Phone (Incl. Area Code) (215) 431-3214	Date of Birth 11/15/1960	
Street Address 125 Barnt Ave., Trenton, NJ 08611		City, State and ZIP Code		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)				
Name USA TRUCK, INC.		No. Employees, Members 500 or More	Phone No. (Include Area Code) (479) 471-6625	
Street Address 3200 Industrial Park Road, P.O. Box 449, Van Buren, AR 72956		City, State and ZIP Code		
Name		No. Employees, Members	Phone No. (Include Area Code)	
Street Address		City, State and ZIP Code		
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 05-11-2021 05-11-2021 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I. I started working for Respondent on March 22, 2021, as a Class A Truck Driver. I possess a Class A commercial driver license; I took a DOT physical and a drug test. After three days of orientation, I was assigned a driver trainer for thirty days or 10,000 miles. On or about April 29, 2021, I completed the thirty days and/or 10,000 miles required for solo driver status. On or about April 30, 2021, I took the road test for solo driver status and passed. On May 6, 2021, 46 days after the first drug test, I was asked to take another drug test that violated 49 CFR 382.305(i)(1). On May 11, 2021, I was terminated from my position for a failed drug test that violated the law. II. On May 11, 2021, Respondent terminated my employment. III. I allege that I have been discriminated against because of my Race (Black) in that Respondent made me take two drug tests, the second test violating 49 CFR 382.305(i)(1), within 46-day period; in that Respondent does not make white Class A Truck Drivers take two drug tests within a 46-day period; in that Respondent unfairly terminated my employment on May 11, 2021, in violation of Title VII of the Civil Rights Act of 1964, as amended.				
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY – When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)		
Date 7/22/2021		Charging Party Signature 		

EEOC Form 161 (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Robert Wiggins**
125 Barnt Ave.
Trenton, NJ 08611

From: **Philadelphia District Office**
801 Market Street
Suite 1000
Philadelphia, PA 19107

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

530-2021-03803

Legal Unit,
Legal Technician

(267) 589-9707**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)


- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Digitally signed by Dana Hutter
 Date: 2021.11.01 16:51:11 -04'00'

Enclosures(s)

Dana R. Hutter,
Deputy Director

(Date Issued)

cc:

Chad Golding
HR Operations Manager
USA TRUCK INC.
3200 Industrial Park Road
Van Buren, AR 72956

IV. Relief

WHEREFORE, Plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs as well as (*check only those that apply*):

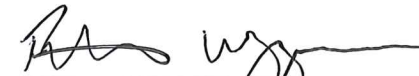
- ☐ Direct the defendant to hire the plaintiff.
☐ Direct the defendant to re-employ the plaintiff.
☐ Direct the defendant to promote the plaintiff.
☐ Direct the defendant to reasonably accommodate the plaintiff's disabilities.
☐ Direct the defendant to reasonably accommodate the plaintiff's religion.
☒ Direct the defendant to (*specify*): PAY BACK WAGES.
☒ If available, grant the plaintiff appropriate injunctive relief, lost wages, liquidated/double damages, front pay, compensatory damages, punitive damages, prejudgment interest, post-judgment interest, and costs, including reasonable attorney fees and expert witness fees.
☒ Other (*specify*): REMOVE illegal drug test results from FMCSA / Drug & Alcohol Clearinghouse.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20th day of Jan., 2022

Signature of Plaintiff

Address



125 BARNET AVENUE
TRENTON, NJ 08611

wigginsbob@hotmail.com

Telephone number

215-431-3217

Fax number (if you have one)